

REMARKS

The above-referenced patent application was filed with claims 1-30. In the outstanding office action, claims 1-19 and 27-30 were rejected as obvious over Porchia et al., U.S. Patent Application Publication No. 2004/005643A1 in view of Cant, U.S. Patent No. 6,164,478, while claims 20-26 were rejected as obvious over the same Porchia et al. reference in further view of McFarland, U.S. Patent No. 5,048,689. However, applicants respectfully submit that the Porchia et al. reference cited is not prior art to the pending application and thus the obviousness rejections must fail.

As the Examiner will readily recognize, U.S. Patent Application Publication No. 2004/005643A1 is in fact the very same publication as the pending application. In other words, this application published under that number on March 25, 2004. A notice to that effect should be in the file history of the pending application. Accordingly, this application can not be used against itself and does not qualify as prior art.

Turning to the statutory basis for this argument, it should be noted that the application is presumably being cited by the Examiner as a basis for the 35 U.S.C. §103 rejection based on its qualification under 35 U.S.C. §102(e). However, 35 U.S.C. §102(e) states:

"A person shall be entitled to a patent unless the invention was described in an application for patent, published under section 122(b), by another filed in the U.S. before the invention by the applicant for patent."

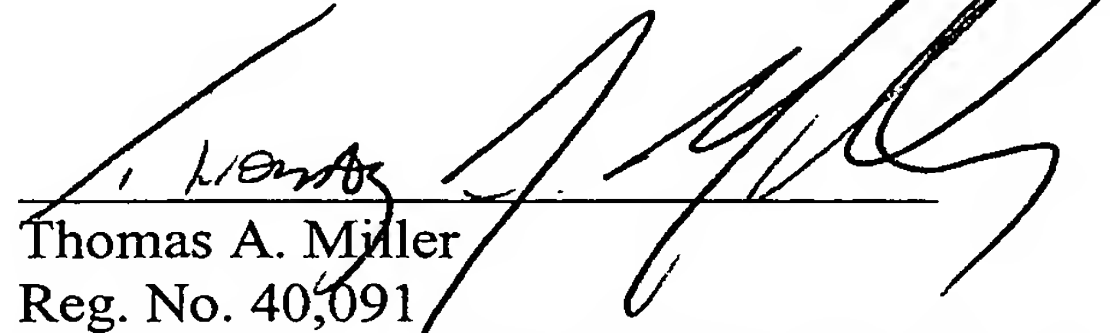
Clearly this is not the case. The cited Porchia et al. Publication No. 2004/0056403A1 in fact corresponds to U.S. patent application no. 10/607,280, the serial number of the pending application. Clearly the publication thus does not qualify under §102(e) as it is not a publication by another, but rather a publication of the present application. Therefore, the Examiner has cited the application as prior art against itself and this argument must fail.

As the Porchia publication was the primary reference upon which the Examiner was basing the rejections, and is the only reference cited for disclosing the corrugations, absorbent layer, backing layer and cellulosic material of the claims, and the Examiner only uses the Cant and McFarland references for disclosure of score lines, many of the elements of the

pending claims have not been shown by the prior art and thus the obviousness rejection as a whole must fail¹.

In light of the foregoing, applicants respectfully submit that each of the pending claims is in condition for allowance and respectfully solicit same. Should the Examiner have any questions, he is respectfully invited to telephone the undersigned.

Respectfully submitted,



Thomas A. Miller
Reg. No. 40,091
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Dr.
6300 Sears Tower
Chicago, Illinois 60606
(312) 474-6300

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¹ To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP §2143